

Adult Day Care Centers (ADC) Application Attachment 1

Montana Code Annotated (MCA)

For complete MCA go to: http://data.opi.state.mt.us/bills/mca_toc/index.htm Title 50 Health and Safety

*** Indicates removal of MCA that does not apply to Adult Day Care Centers or related facilities.

Specific terms for ADC emphasized in **Bold**

50-5-101. Definitions. As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

- (1) "Accreditation" means a designation of approval.
- (2) "Accreditation association for ambulatory health care" means the organization nationally recognized by that name that surveys ambulatory surgical centers upon their requests and grants accreditation status to the ambulatory surgical centers that it finds meet its standards and requirements.
- (3) "**Activities of daily living**" means tasks usually performed in the course of a normal day in a resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.
- (4) "**Adult day-care center**" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.
- (5) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in **50-5-216**, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.
 - (b) As used in this subsection (5), the following definitions apply:
 - (i) "Aged person" means a person as defined by department rule as aged.
 - (ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.
 - (iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.
 - (iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.
 - (B) The term does not include the administration of prescriptive medications.
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- (7) "Assisted living facility" means a congregate residential setting that provides or coordinates personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related services.

- (15) "Congregate" means the provision of group services designed especially for elderly or disabled persons who require supportive services and housing.
- (16) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care

facility.

(19) "Department" means the department of public health and human services provided for in **2-15-2201**.

(23) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including licensed addiction counselors.

(24) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(25) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(26) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

(27) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

*** (30) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility that provides intermediate developmental disability care for two or more persons.

(b) The term does not include community homes for persons with developmental disabilities that are licensed under **53-20-305** or community homes for persons with severe disabilities that are licensed under **52-4-203**.

(31) "Intermediate developmental disability care" means the provision of intermediate nursing care services, health-related services, and social services for persons with a developmental disability, as defined in **53-20-102**, or for persons with related problems.

(32) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(34) "Licensed health care professional" means a licensed physician, physician assistant-certified, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the department of labor and industry.

(35) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of

two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under **53-20-305**; community homes for persons with severe disabilities, licensed under **52-4-203**; youth care facilities, licensed under **52-2-622**; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(43) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(44) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(45) "**Personal care**" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

(46) "**Practitioner**" means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.

(48) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(49) "**Resident**" means an individual who is in a long-term care facility or in a residential care facility.

(50) "**Residential care facility**" means an adult day-care center, an adult foster care home, an assisted living facility, or a retirement home.

(53) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

(54) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

History: Ap. p. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; Ap. p. Sec. 159, Ch. 197, L. 1967; amd. Sec. 1, Ch. 290, L. 1969; amd. Sec. 1, Ch. 197, L. 1971; amd. Sec. 1, Ch. 448, L. 1973; amd. Sec. 1, Ch. 150, L. 1974; amd. Sec. 1, Ch. 447, L. 1975; amd. Sec. 22, Ch. 187, L. 1977; R.C.M. 1947, 69-4102(1), 69-5201; amd. Sec. 1, Ch. 347, L. 1979; amd. Sec. 1, Ch. 432, L. 1981; amd. Sec. 1, Ch. 433, L. 1981; amd. Sec. 1, Ch. 324, L. 1983; amd. Secs. 1, 13, Ch. 329, L. 1983; amd. Sec. 7, Ch. 597, L. 1983; amd. Sec. 1, Ch. 641, L. 1983; amd. Sec. 9, Ch. 713, L. 1985; amd. Sec. 108, Ch. 370, L. 1987; amd. Sec. 1, Ch. 450, L. 1987; amd. Sec. 1, Ch. 477, L. 1987; amd. Sec. 13, Ch. 330, L. 1989; amd. Sec. 1, Ch. 616, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 764, L. 1991; amd. Sec. 1, Ch. 151, L. 1993; amd. Sec. 1, Ch. 590, L. 1993; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 1, Ch. 366, L. 1995; amd. Sec. 2, Ch. 398, L. 1995; amd. Sec. 92, Ch. 418, L. 1995; amd. Sec. 250, Ch. 546, L. 1995; amd. Sec. 207, Ch. 42, L. 1997; amd. Sec. 3, Ch. 93, L. 1997; amd. Sec. 1, Ch. 99, L. 1997; amd. Sec. 2, Ch. 171, L. 1997; amd. Sec. 3, Ch. 188, L. 1997; amd. Sec. 4, Ch. 98, L. 1999; amd. Sec. 1, Ch. 133, L. 1999; amd. Sec. 4, Ch. 192, L. 2001; amd. Sec. 1, Ch. 366, L. 2001; amd. Sec. 2, Ch. 54, L. 2003; amd. Sec. 99, Ch. 114, L. 2003; amd. Sec. 1, Ch. 348, L. 2003; amd. Sec. 1, Ch. 401, L. 2003; amd. Sec. 1, Ch. 403, L. 2003.

50-5-104. Certain exemptions for spiritual healing institution. Parts 1 through 3 and rules and standards adopted by the department may not authorize the supervision, regulation, or control of care or treatment of persons in any home or institution conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination. However, a license is required and the minimum standards referred to in **50-5-103(2)** apply.

History: En. Sec. 175, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5217(2); amd. Sec. 3, Ch. 347, L. 1979.

50-5-105. Discrimination prohibited. (1) All phases of the operation of a health care facility must be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental disability, or political ideas.

(2) (a) A health care facility may not refuse to admit a person to the facility solely because the person has an HIV-related condition.

(b) For the purposes of this subsection (2), the following definitions apply:

(i) "HIV" means the human immunodeficiency virus identified as the causative agent of acquired immunodeficiency syndrome (AIDS) and includes all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological system and leave the infected person immunodeficient or neurologically impaired.

(ii) "HIV-related condition" means any medical condition resulting from an HIV infection, including but not limited to seropositivity for HIV.

(3) A person who operates a facility may not discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient must continue and remain unaffected.

(4) Except for a hospital that employs its medical staff, a hospital considering an application for staff membership or granting privileges within the scope of the applicant's license may not deny the application or privileges because the applicant is licensed under Title 37, chapter 6.

(5) This section does not preclude a hospital from limiting membership or privileges based on education, training, or other relevant criteria.

History: En. Sec. 175, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5217(1); amd. Sec. 4, Ch. 347, L. 1979; amd. Sec. 1, Ch. 152, L. 1989; amd. Sec. 1, Ch. 309, L. 1989; amd. Sec. 47, Ch. 472, L. 1997; amd. Sec. 31, Ch. 224, L. 2003.

50-5-107. Unlawful use of word nursing. It is unlawful for any facility operating in this state to use the word "nursing" in its name, signs, advertising, etc., unless that facility does in fact provide 24-hour nursing care by licensed nurses.

History: En. 69-5203.1 by Sec. 2, Ch. 448, L. 1973; R.C.M. 1947, 69-5203.1.

50-5-108. Injunction. The department may bring an action for injunction or other process against any person to:

(1) restrain a facility from engaging in a prohibited activity that is endangering the health, safety, or welfare of any individual under the care of the facility;

(2) enjoin a violation of part 1 or 2 of this chapter, or a violation of a rule, license provision, or order adopted or issued pursuant to part 1 or 2; or

(3) require compliance with part 1 or 2 of this chapter or compliance with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

History: En. Sec. 178, Ch. 197, L. 1967; amd. Sec. 75, Ch. 349, L. 1974; R.C.M. 1947, 69-5220; amd. Sec. 6, Ch. 347, L. 1979; amd. Sec. 10, Ch. 415, L. 1993.

50-5-109. Repealed. Sec. 13, Ch. 415, L. 1993.

History: En. Sec. 179, Ch. 197, L. 1967; R.C.M. 1947, 69-5221; amd. Sec. 7, Ch. 347, L. 1979.

50-5-110 reserved.

50-5-112. Civil penalties. (1) A person who commits an act prohibited by **50-5-111** is subject to a civil penalty not to exceed \$1,000 for each day that a facility is in violation of a provision of part 1 or 2 of this chapter or of a rule, license provision, or order adopted or issued pursuant to part 1 or 2. The department

or, upon request of the department, the county attorney of the county in which the health care facility in question is located may petition the court to impose the civil penalty. Venue for an action to collect a civil penalty pursuant to this section is in the county in which the facility is located or in the first judicial district.

(2) In determining the amount of penalty to be assessed for an alleged violation under this section, the court shall consider:

- (a) the gravity of the violation in terms of the degree of physical or mental harm to a resident or patient;
- (b) the degree of harm to the health, safety, rights, security, or welfare of a resident or patient;
- (c) the degree of deviation committed by the facility from a requirement imposed by part 1 or 2 of this chapter or by a rule, license provision, or order adopted or issued pursuant to part 1 or 2; and
- (d) other matters as justice may require.

(3) A penalty collected under this section must be deposited in the state general fund.

(4) In addition to or exclusive of the remedy provided in subsection (1), the department may pursue remedies available for a violation, as provided for in **50-5-108**, or any other remedies available to it.

History: En. Sec. 2, Ch. 415, L. 1993; amd. Sec. 42, Ch. 422, L. 1997.

50-5-113. Criminal penalties. (1) A person is guilty of a criminal offense under this section if the person knowingly conceals material information about the operation of the facility or does any of the following and by doing so threatens the health or safety of one or more individuals entrusted to the care of the person:

- (a) commits an act prohibited by **50-5-111**;
- (b) omits material information or makes a false statement or representation in an application, record, report, or other document filed, maintained, or used for compliance with the provisions of part 1 or 2 of this chapter or with rules, license provisions, or orders adopted or issued pursuant to part 1 or 2; or
- (c) destroys, alters, conceals, or fails to file or maintain any record, information, or application required to be maintained or filed in compliance with a provision of part 1 or 2 of this chapter or in compliance with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(2) A person convicted under subsection (1) is subject to a fine of not more than \$1,000 for the first offense and not more than \$2,000 for each subsequent offense for each day that a facility is in violation of a provision of part 1 or 2 of this chapter or of a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(3) In determining the amount of penalty to be assessed for an alleged violation under this section, the court shall consider:

- (a) the gravity of the violation in terms of the degree of physical or mental harm to a resident or patient;
- (b) the degree of harm to the health, safety, rights, security, or welfare of a resident or patient;
- (c) the degree of deviation committed by the facility from a requirement imposed by part 1 or 2 of this chapter or by a rule, license provision, or order adopted or issued pursuant to part 1 or 2; and
- (d) other matters as justice may require.

(4) Prosecution under this section does not bar enforcement under any other section of this chapter or pursuit of any other appropriate remedy by the department.

(5) Venue for prosecution pursuant to this section is in the county in which the facility is located or in the first judicial district.

(6) A penalty collected under this section must be deposited in the state general fund.

History: En. Sec. 3, Ch. 415, L. 1993; amd. Sec. 43, Ch. 422, L. 1997.

50-5-111. Prohibited activities. It is unlawful to:

- (1) operate a facility without a license;
- (2) prevent, interfere with, or impede department investigation, department enforcement, department examination of relevant books and records, or activities of the department concerning the preservation of

evidence; or

(3) violate any provision of part 1 or 2 of this chapter or violate a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

History: En. Sec. 1, Ch. 415, L. 1993.

50-5-114. Administrative enforcement -- notice -- order for corrective action. (1) If the department believes that a violation of a provision of part 1 or 2 of this chapter or of a rule adopted or a condition or limitation imposed by a license issued pursuant to part 1 or 2 has occurred, it may serve written notice on the alleged violator or the violator's agent personally or by certified mail. The notice must specify the provision of part 1 or 2 of this chapter or the rule or license condition or limitation alleged to have been violated and the facts alleged to constitute the violation. The notice must inform the alleged violator of the right to a hearing and that the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to the hearing. The notice may include an order to take necessary corrective action, including ceasing new admissions, relocating residents, or ceasing the violation within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the department. On receipt of the request, the department shall schedule a hearing. Until issuance of a contrary decision by the department, a department order concerning corrective action remains effective and enforceable.

(2) If, after a hearing held under subsection (1), the department finds that a violation has occurred, it shall issue an appropriate order for the prevention, abatement, or control of the violation involved or the taking of other corrective action. As appropriate, an order issued as part of a notice or after a hearing may prescribe the date by which the violation must cease and the time limits for particular action in preventing, abating, or controlling the violation. If, after a hearing on an order contained in a notice, the department finds that a violation has not occurred or is not occurring, it shall declare the order void.

(3) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing conducted pursuant to this section.

(4) Instead of or in addition to issuing the order provided for in subsection (1), the department may:

(a) require that the alleged violators appear before the department for a hearing at a time and place specified in the notice and answer the charges; or

(b) initiate action under any other applicable provisions of part 1 or 2 of this chapter.

(5) Before acting under this section, the department shall attempt to obtain voluntary compliance through a warning, conference, or any other appropriate means.

(6) In connection with a hearing held pursuant to this section, the department may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of any party.

History: En. Sec. 4, Ch. 415, L. 1993; amd. Sec. 252, Ch. 546, L. 1995.

50-5-115. Receiverships. (1) If receivership has not already been instituted under medicaid or medicare, upon notice to the facility, the department may file a complaint in district court for receivership under any of the following conditions in addition to applicable conditions listed in **27-20-102**:

(a) a facility is operating without a license and residents are in danger of serious physical or mental harm;

(b) a facility intending to close has not made arrangements within 30 days before closure for the orderly transfer of residents;

(c) a facility is abandoned by an owner; or

(d) a life threatening situation exists for the residents of the facility.

(2) If the department believes or has received notice from the department of justice that there is an emergency that presents or might present an immediate and serious threat to the health or safety of patients or residents of a facility, a receiver may be appointed by the court upon an ex parte application by the department. If a receiver is appointed upon an ex parte application, notice must be given by the department to the facility within 24 hours of issuance of the receivership order and a hearing must be offered the facility by the court within 10 days of issuance of the order to determine whether the order

will be continued.

(3) The department shall maintain a list of persons qualified to act as receivers.

(4) The selection, appointment, and removal of receivers must be consistent with Title 27, chapter 20, parts 2 and 3.

(5) Whenever possible, receivers must be paid from the income of the facility. However, receivers may be paid from the patient protection account provided for in **50-5-232**. The court shall direct the amount of payments to be made to the receiver, the payments to be made by the receiver, and the order of payments made to the receiver or to other entities. Payments owed to a facility that are made to the receiver must be used to discharge any obligation of the entity making the payments owed to the facility.

(6) The powers and duties of the receiver include:

(a) the duty to protect the health, welfare, and safety of the residents;

(b) the power to hire, discipline, and fire staff;

(c) the power to collect debts due to the facility;

(d) the power to settle labor disputes;

(e) the power to petition the court to set aside unreasonable contracts or leases entered into by the facility management;

(f) the power to make capital investments in the facility with court approval; and

(g) all other powers granted receivers by **27-20-302**.

History: En. Sec. 5, Ch. 415, L. 1993; amd. Sec. 3, Ch. 514, L. 1995.

50-5-116. Facility inspections. (1) In addition to its annual licensure inspections, as provided by **50-5-204**, the department may inspect any facility for compliance with part 1 or 2 of this chapter or for compliance with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(2) An authorized representative of the department may inspect a facility and associated property without prior notice to the owner or staff of the facility whenever the department considers it necessary. The authorized representative must be given access to all records and an opportunity to copy the records.

History: En. Sec. 6, Ch. 415, L. 1993.

50-5-201. License requirements. (1) A facility or licensee considering construction of or alteration or addition to a health care facility shall submit plans and specifications to the department for preliminary inspection and approval prior to commencing construction.

(2) A person may not operate a health care facility unless the facility is licensed by the department. Licenses may be issued for a period of 1 to 3 years in duration. A license is valid only for the person and premises for which it was issued. A license may not be sold, assigned, or transferred.

(3) Upon discontinuance of the operation or upon transfer of ownership of a facility, the license must be returned to the department.

(4) Licenses must be displayed in a conspicuous place near the admitting office of the facility.

History: En. Sec. 161, Ch. 197, L. 1967; amd. Sec. 105, Ch. 349, L. 1974; R.C.M. 1947, 69-5203; amd. Sec. 2, Ch. 37, L. 1979; amd. Sec. 8, Ch. 347, L. 1979; amd. Sec. 1, Ch. 405, L. 1991; amd. Sec. 11, Ch. 415, L. 1993.

50-5-202. License fees. The department shall collect fees for each license issued for deposit in the state general fund as follows:

(1) facilities with 20 beds or less--\$20;

(2) facilities with 21 beds or more--\$1 per bed.

History: En. Sec. 162, Ch. 197, L. 1967; amd. Sec. 1, Ch. 282, L. 1975; R.C.M. 1947, 69-5204.

50-5-203. Application for license. The procedure to apply for a license is as follows:

(1) At least 30 days prior to the opening of a facility and after that no later than the expiration date of the license, application is made to the department accompanied by the license fee.

(2) The application shall contain:

- (a) the name and address of the applicant if an individual, the name and address of each member if a firm, partnership, or association, or the name and address of each officer if a corporation;
- (b) the location of the facility;
- (c) the name of the person or persons who will manage or supervise the facility;
- (d) the number and type of patients or residents for which care is provided;
- (e) any information which the department may require pertaining to the number, experience, and training of employees;
- (f) information on ownership, contract, or lease agreement if operated by a person other than the owner.

History: En. Sec. 163, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 2, Ch. 282, L. 1975; R.C.M. 1947, 69-5205; amd. Sec. 2, Ch. 405, L. 1991.

50-5-204. Issuance and renewal of licenses -- inspections. (1) After receipt of a new application and notice that the facility is ready to be inspected, the department or its authorized agent shall conduct an initial inspection of the facility within 45 days.

(2) After receipt of an application for renewal of a license, the department or its authorized agent shall inspect the facility without prior notice to the operator or staff.

(3) If the department determines that the facility meets minimum standards and the proposed or existing staff is qualified, the department shall issue a license for a period of 1 to 3 years in duration.

(4) If minimum standards are not met, the department may issue a provisional license for less than 1 year if operation will not result in undue hazard to patients or residents or if the demand for accommodations offered is not met in the community.

(5) The minimum standards that home health agencies must meet in order to be licensed must be as outlined in 42 U.S.C. 1395x(o), as amended, and in rules implementing it that add minimum standards.

(6) The department may inspect a licensed health care facility whenever it considers it necessary. The entire premises of a licensed facility must be open to inspection, and access to all records must be granted at all reasonable times.

History: En. Sec. 164, Ch. 197, L. 1967; R.C.M. 1947, 69-5206; amd. Sec. 9, Ch. 347, L. 1979; amd. Sec. 1, Ch. 5, Sp. L. 1981; amd. Sec. 1, Ch. 443, L. 1985; amd. Sec. 1, Ch. 143, L. 1987; amd. Sec. 3, Ch. 405, L. 1991; amd. Sec. 4, Ch. 366, L. 1995.

50-5-207. Denial, suspension, or revocation of health care facility license -- provisional license. (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:

- (a) The facility fails to meet the minimum standards pertaining to it prescribed under [50-5-103](#).
 - (b) The staff is insufficient in number or unqualified by lack of training or experience.
 - (c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with [37-1-203](#) or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.
 - (d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.
 - (e) There is cruelty or indifference affecting the welfare of the patients or residents.
 - (f) There is misappropriation of the property or funds of a patient or resident.
 - (g) There is conversion of the property of a patient or resident without the patient's or resident's consent.
 - (h) Any provision of parts 1 through 3 is violated.
- (2) The department may reduce a license to provisional status if as a result of an inspection it is determined that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.
- (3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate

of need requirements of part 3.

(4) The department may provide in its revocation order that the revocation is in effect for up to 2 years. If this provision is appealed, it must be affirmed or reversed by the court.

History: En. Sec. 167, Ch. 197, L. 1967; R.C.M. 1947, 69-5209; amd. Sec. 10, Ch. 347, L. 1979; amd. Sec. 12, Ch. 415, L. 1993; amd. Sec. 253, Ch. 546, L. 1995.

50-5-208. Hearing required. (1) A license may not be denied, suspended, or revoked without notice and an opportunity for a hearing before the department.

(2) Notice must be given the applicant or licensee of a date, not less than 15 days after mailing or service, for a hearing before the department.

(3) The decision of the department is final 30 days after it is mailed or served unless the applicant or licensee commences an action in the district court to appeal the decision. An appeal must be in the district court where the facility is located or will be located.

History: En. Sec. 168, Ch. 197, L. 1967; amd. Sec. 73, Ch. 349, L. 1974; R.C.M. 1947, 69-5210; amd. Sec. 254, Ch. 546, L. 1995.